

### **REMARKS**

The Office Action of May 12, 2008 has been carefully considered.

Prosecution of this application has been reopened, and the previous rejection, which was under appeal, has been withdrawn.

The Examiner has once again noted that Applicant has not filed a copy of the priority application CO 02075481, as required by 35 USC 119(b).

Applicant once again points out that the present application is a PCT national stage application filed under 35 USC 371. A certified copy of the priority application was provided to the International Bureau prior to entry into the national stage, and no such certified copy need be provided to the US Patent and Trademark Office. It is strongly suggested that the Examiner consult with PCT Legal Division as to the requirements for claiming priority in national stage applications.

Claims 5, 7 and 9 now stand rejected under 35 USC 103(a) over Sookne in view of Blecker et al and Freeman. Sookne and Freeman are newly cited.

Sookne is alleged to show a symmetric mattress comprising a central spring, a sisal layer, a natural cotton layer, and a foam layer to which is attached an outer textile padded layer. While Sookne does not teach a perforated rubber or latex cushion, Blecker has been cited to show a mattress including a perforated rubber layer. Moreover, while Sookne does teach a layer between the cotton layer and the foam layer, it is not a sisal layer, so Freeman has been cited for its showing of a mattress with two sisal layers.

Applicant points out however that the two sisal layers of Freeman are in contact with each other, surrounding the

central spring unit. There is no suggestion of separating the sisal layers, and placing one of those sisal layers in an entirely different location. Further, the fabric layer i-j of Sookne is actually a layer of fabric coated on at least one side with heat dissipating filled resin. Thus, even if one used a sisal layer as the second fabric layer, it would need to be coated as described at col. 3, lines 54-59, with a flexible, film forming polymeric binder having dispersed therein from 30 to 60 weight percent of a flake or leaf shaped heat conductive material.

One object of the present invention is the introduction in the intermediate layers of the mattress of natural materials, without significant contribution of polymeric derivatives or materials, which sometimes lead to allergic effects to the user (see paragraph [0002] of the published application). Hence, Applicant seeks to avoid such materials as the synthetic resin used in Sookne.

Claim 5 has now been amended to recite that the second sisal layer is in contact with both the cotton layer and the natural rubber or foam layer, the embodiment shown in Fig. 2 of the present application. Claim 5 as amended excludes the embodiment of Sookne taken in view of Freeman, since such an embodiment would invariably include a fabric layer *coated with resin* between the alleged second sisal layer and either the cotton layer or the foam layer. To eliminate that resin layer would be clearly contrary to the teachings of Sookne, which requires the resin layer for heat dissipation, and thereby prevents the charring of the interior padding or batting which occurs when the mattress is in contact with a lit cigarette.

The Office Action takes the position that the claimed recitation of the outer textile padded layer being *sewn* to the natural latex or rubber layer constitutes no more than a

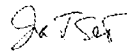
product by process recitation which may be disregarded in terms of structure.

Applicant disagrees. While sewing is a process, the result of sewing is a clear and well known physical structure, with layer being attached by thread or other filamentous material connecting the layers through perforations. This is distinguished, for example, from adhesively bonded layers; while adhesive bonding is also a process, the result is an adhesive layer between the layers being attached, another well known physical structure.

Withdrawal of this rejection is accordingly requested.

In view of the foregoing amendments and remarks, Applicant submits that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



Ira J. Schultz  
Registration No. 28666  
Attorney for Applicant  
(703)837-9600, ext. 23